

§ 265.8

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paragraph (d) of this section for appealing the denial.

[40 FR 7331, Feb. 19, 1975, as amended at 45 FR 44271, July 1, 1980; 47 FR 20304, May 12, 1982; 51 FR 26386, July 23, 1986; 52 FR 13668, Apr. 24, 1987; 60 FR 57345, Nov. 15, 1995; 62 FR 64282, Dec. 5, 1997; 63 FR 6482, Feb. 9, 1998; 64 FR 41290, July 30, 1999; 68 FR 56559, Oct. 1, 2003; 69 FR 34935, June 23, 2004]

§ 265.8 Business information; procedures for predisclosure notification to submitters.

(a) *In general.* This section provides a procedure by which persons submitting business information to the Postal Service can request that the information not be disclosed pursuant to a request under the Freedom of Information Act. This section does not affect the Postal Service's right, authority, or obligation to disclose information in any other context, nor is it intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the Postal Service, its officers, or any person. Existing rights of submitters are also unaffected. For purposes of this section, the following definitions apply:

(1) *Business information* means commercial or financial information provided directly or indirectly to the Postal Service by a submitter that arguably is protected from disclosure under Exemption 4 of the Freedom of Information Act, 5 U.S.C. 552(b)(4), which is restated in § 265.6(b)(2).

(2) *Submitter* means any person or entity who provides business information, directly or indirectly, to the Postal Service. The term includes, but is not limited to, corporations, state governments, and foreign governments.

(b) *Notice to submitters.* (1) The custodian shall, to the extent permitted by law, provide a submitter with prompt written notice of a Freedom of Information Act request for the submitter's business information whenever required under paragraph (c) of this section, except as provided in paragraph (d) of this section, in order to afford the submitter an opportunity to object to disclosure pursuant to paragraph (f) of this section. Such written notice shall either describe the exact nature of the business information requested or provide copies of the records or portions of records containing the busi-

ness information. In the case of an administrative appeal, the General Counsel shall be responsible for providing such notification as may be appropriate under this section.

(2) When notice is given to a submitter under paragraph (b)(1) of this section, the requester also shall be notified that notice and an opportunity to object are being provided to the submitter pursuant to this section.

(c) *When notice is required.* Notice shall be given to a submitter whenever:

(1) The submitter has in good faith designated the information as information deemed protected from disclosure under Exemption 4, in accordance with the procedure described in paragraph (e) of this section; or

(2) In the opinion of the custodian, or of the General Counsel in the case of an administrative appeal, it is likely that disclosure of the information would result in competitive harm to the submitter.

(d) *Exceptions to notice requirements.* The notice requirements of paragraph (b) of this section shall not apply if:

(1) The Postal Service determines without reference to the submitter that the information will not be disclosed;

(2) The information lawfully has been published or has been officially made available to the public;

(3) Disclosure of the information is required by law (other than the Freedom of Information Act, 5 U.S.C. 552); or

(4) Disclosure of the particular kind of information is required by a Postal Service regulation, except that, in such case, advance written notice of a decision to disclose shall be provided to the submitter if the submitter had provided written justification for protection of the information under Exemption 4 at the time of submission or a reasonable time thereafter.

(e) *Procedure for designating business information at the time of its submission.*

(1) Submitters of business information shall use good-faith efforts to designate, by appropriate markings, either at the time of submission or at a reasonable time thereafter, those portions of their submissions which they deem to be protected from disclosure under Exemption 4. Each record, or portion

thereof, to be so designated, shall be clearly marked with a suitable legend such as Privileged Business Information—Do Not Release. When the designated records contain some information for which an exemption is not claimed, the submitter shall clearly indicate the portions for which protection is sought.

(2) At the time a designation is made pursuant to paragraph (e)(1) of this section, the submitter shall furnish the Postal Service with the name, title, address and telephone number of the person or persons to be contacted for the purpose of the notification described in paragraph (b) of this section.

(3) Submitters who provide to a postal facility business information on a recurring basis and in substantially identical form may use the following simplified process: The first submission will provide in full the information required in paragraphs (e)(1) and (2) of this section; shall identify the type of information, *e.g.*, PS Form 3602, to which it is intended to apply; and shall state that it is intended to serve as a designation for all of the information of this type that is submitted to the particular facility. Thereafter when providing this type of information, the submitter need only mark a submission with a reference to the designation, *e.g.*, Privileged: see letter of 4-1-91. By written agreement with the head of the facility, even this marking may be dispensed with if it is not necessary to alert postal employees at that facility of the claim of exemption.

(4) A designation made pursuant to paragraph (e) of this section shall be deemed to have expired ten years after the date the records were submitted unless the submitter requests, and provides reasonable justification for, a designation period of greater duration.

(5) The Postal Service will not determine the validity of any request for confidential treatment until a request for disclosure of the information is received.

(f) *Opportunity to object to disclosure.* Through the notice described in paragraph (b) of this section, the submitter shall be afforded a reasonable period of time within which to provide the Postal Service with a detailed written statement of any objection to disclo-

sure. Such statement shall specify all grounds for withholding any of the information under any exemption of the Freedom of Information Act and, in the case of Exemption 4, shall demonstrate why the information is contended to be a trade secret or commercial or financial information that is privileged or confidential. Whenever possible, the submitter's claim of confidentiality should be supported by a statement or certification by an officer or authorized representative of the submitter that the information in question is in fact confidential, has not been disclosed to the public by the submitter, and is not routinely available to the public from other sources. Information provided by a submitter pursuant to this paragraph may itself be subject to disclosure under the FOIA.

(g) *Determination that confidential treatment is warranted.* If the custodian determines that confidential treatment is warranted for any part of the requested records, he shall inform the requester in writing in accordance with the procedures set out in §265.7(d) of this chapter, and shall advise the requester of the right to appeal. A copy of the letter of denial shall also be provided to the submitter of the records in any case in which the submitter had been notified of the request pursuant to paragraph (c) of this section.

(h) *Notice of intent to disclose.* The custodian, in the case of an initial request, or the General Counsel, in the case of an appeal, shall consider carefully a submitter's objections and specific grounds for nondisclosure prior to determining whether to disclose business information. In the event of a decision to disclose business information over the objection of the submitter, the submitter shall be furnished a written notice which shall include:

(1) A description of the business information to be disclosed;

(2) A statement of the reasons for which the submitter's disclosure objections were not sustained; and

(3) The specific date upon which disclosure will occur. Such notice of intent to disclose shall be forwarded to the submitter a reasonable number of days prior to the specified disclosure date and the requester shall be notified likewise.

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(i) *Notice of FOIA lawsuit.* Whenever a requester brings suit seeking to compel disclosure of business information, the General Counsel shall promptly notify the submitter.

[56 FR 56934, Nov. 7, 1991]

§ 265.9 Schedule of fees.

(a) *Policy.* The purpose of this section is to establish fair and equitable fees to permit the furnishing of records to members of the public while recovering the full allowable direct costs incurred by the Postal Service. The Postal Service will use the most efficient and least costly methods available to it when complying with requests for records.

(b) *Standard rates*—(1) *Record retrieval.* Searches may be done manually or by computer using existing programming.

(i) *Manual search.* The fee for a manual search is \$32 per hour (fractions of an hour are rounded to the nearest half hour).

(ii) *Computer search.* The fee for retrieving data by computer is the actual direct cost of the retrieval, including computer search time, and personnel cost in effect at the time that the retrieval services are performed. The fees are subject to periodic revision. A copy of the fees are included within the public index. (See appendix A.)

(2) *Duplication.* (i) Except where otherwise specifically provided in postal regulations, the fee for duplicating any record or publication is \$.15 per page.

(ii) The Postal Service may at its discretion make coin-operated copy machines available at any location or otherwise give the requester the opportunity to make copies of Postal Service records at his own expense. Unless authorized by the Records Office, however, no off-site copying shall be permitted of records which, if lost, could not be replaced without inconvenience to the Postal Service.

(iii) The Postal Service will normally furnish only one copy of any record. If duplicate copies are furnished at the request of the requester, the \$.15 per-page fee shall be charged for each copy of each duplicate page without regard to whether the requester is eligible for free copies pursuant to paragraph (c) or (g) of this section. At his or her discretion, when it is reasonably necessary because of a lack of adequate copying

facilities or other circumstances, the custodian may make the requested record available to the requester for inspection under reasonable conditions and need not furnish a copy thereof.

(3) *Review.* The fee for reviewing records located in response to a commercial use request is \$32 per hour (fractions of an hour are rounded to the nearest half hour). Only requesters who are seeking documents for commercial use may be charged for review. “Review” is defined in paragraph (h)(4) of this section; “commercial use” is defined in paragraph (h)(5) of this section.

(4) *Micrographics.* Paragraphs (b) (1), (2) and (3) of this section also apply to information stored within micrographic systems.

(c) *Four categories of fees to be charged.* For the purpose of assessing fees under this section, a requester shall be classified into one of four categories: commercial use requesters; educational and noncommercial scientific institutions; representatives of the news media; and all other requesters. Requesters in each category must reasonably describe the records sought. Fees shall be charged requesters in each category in accordance with the following.

(1) *Commercial use requesters.* Fees shall be charged to recover the full direct costs of search, review and duplication in accordance with the rates prescribed in paragraphs (b) (1) through (3) of this section, subject only to the general waiver set out in paragraph (g)(1) of this section. The term “commercial use request” is defined in paragraph (h)(5).

(2) *Educational and noncommercial scientific institutions.* Fees shall be charged only for duplication in accordance with paragraph (b)(2) of this section, except that the first 100 pages furnished in response to a particular request shall be furnished without charge. (See also the general waiver provision in paragraph (g)(1) of this section.) To be eligible for the reduction of fees applicable to this category, the requester must show that the request is being made as authorized by and under the auspices of a qualifying institution and that the records are not sought for a commercial use, but are sought in furtherance of scholarly or scientific research. These institutions